U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: OCT 0 1 2013 Office: LOS ANGELES FILE: [redacted]

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Michael Shumway

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Los Angeles, California. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The applicant filed a motion to reopen the AAO decision, which was initially rejected as untimely filed, but later accepted as timely filed and the previous decision on appeal was affirmed. The applicant is now filing another motion. The motion will be granted and the previous decision of the AAO again affirmed.

The applicant is a native and citizen of Korea who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure admission into the United States by fraud or willful misrepresentation on September 20, 1994 when an Alien Relative Petition (Form I-130), Application to Register Permanent Residence or Adjust Status (Form I-485), and supporting documents based on a fictitious marriage were filed. The applicant is married to a lawful permanent resident and has a U.S. citizen daughter. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

In a decision dated December 12, 2007, the field office director found that the assertions provided by the applicant's spouse and the evidence in the record did not support a finding that the applicant's spouse would experience extreme hardship as a result of the applicant's removal.

In an undated Notice of Appeal to the AAO (Form I-290B), counsel stated that there had been no adequate finding of fraud in the applicant's case. She stated that the applicant had no knowledge of an application filed on his behalf that was based on a fraudulent marriage. Counsel also stated that the applicant did not know the spouse who allegedly filed the petition nor did he know the attorney who filed the petition. Counsel stated further that the applicant was never informed of the basis for the conclusion that he filed a petition for an immigration benefit based on a fraudulent marriage nor was he given the opportunity to rebut the information.

On appeal, the AAO found that the applicant was inadmissible under section 204(c) of the Act for having sought immediate relative status as the spouse of a U.S. citizen by reason of a marriage that was entered into for the purposes of evading immigration laws. We then found that because the Act provided no waiver for an applicant in violation of section 204(c) of the Act no purpose would be served in discussing his eligibility for a waiver under section 212(i) of the Act.

On motion, counsel stated again that the applicant had no knowledge of an application filed on his behalf that was based on a fraudulent marriage. Counsel stated again that the applicant was never given the opportunity to rebut the derogatory information regarding the 1994 filing. Counsel also stated that the applicant family register, submitted in 1994, was not translated in its entirety and thus, failed to show his current marriage and children. Counsel stated that the applicant was unaware of this incorrect translation. Finally, counsel stated that the applicant's spouse will suffer extreme hardship as a result of the applicant's inadmissibility.

Based on this motion, we withdrew our finding that the applicant entered into or attempted or conspired to enter into a fraudulent marriage in violation of section 204(c) of the Act. We found that

while the applicant submitted fraudulent documentation to establish a 1994 marriage to a U.S. citizen, that marriage was a fiction, an invention of the fraudulent documents he submitted. However, we affirmed the field office director's finding of inadmissibility under section 212(a)(6)(C)(i) of the Act for having attempted to procure admission into the United States or a benefit under the Act by willful misrepresentation. We also found that the applicant failed to establish extreme hardship to his U.S. citizen spouse.

In the current motion, counsel claims that the applicant's misrepresentation was not willful because he was not aware of the misrepresentation being made. Specifically counsel states that the family register was translated by a notary public and the applicant did not review the translation before it was submitted, the applicant's did not appear for his adjustment interview based on this fictitious marriage, and the applicant, not being fluent in English, did not understand what he was signing.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

As stated in our previous decisions, the record indicates that on September 20, 1994 a Form I-130 was filed on the applicant's behalf by a At the same time, a Form I-485, based on the fictitious marriage, was filed by the applicant. Submitted in support of the Form I-130 and Form I-485 is a copy of the applicant's Korean passport and I-94 card showing an entry into the United States on December 31, 1989. Also included in the record is a family register from Korea, dated July 22, 1994, stating that the applicant was born on October 15, 1947 and that he married a on January 10, 1974 who died on June 18, 1978, and that he had no children. The record includes a fraudulent certificate of marriage from the New York, which states that the applicant and a were married on August 23, 1994. The AAO notes that the record indicates that the Form I-130 and Form I-485 were denied on April 5, 1996 because the applicant and his U.S. citizen spouse failed to appear for an interview on February 7, 1995.

We noted that the applicant's current Form I-130, filed by his daughter on December 26, 2006, states that he is married to and has three children. Included as supporting documentation for this Form I-130 petition is a family register from Korea, dated July 25, 2006, which states that the applicant was married to and that this marriage was reported to the register as of August 24, 1982. This register also indicates that the applicant has a son, born in 1974, a daughter, born in 1975, and a second daughter, born in 1983. Furthermore, on the applicant's current Form I-485 he states that he previously applied for permanent resident status about 10 years ago, but withdrew the application.

We found that evidence of the applicant's attempt to procure admission through willful misrepresentation is clearly documented in the record in the form of the Form I-130, Form I-485,

and supporting documentation filed in 1994 and the contradictory evidence submitted with his current application.

The record includes statements from counsel and the applicant asserting that the applicant did not know Ms. or Mr. the attorney of record for the fraudulent petition. The applicant stated that in 1994, while in Korea, he met an immigration broker and paid her $7,000 to start the immigration process in the United States. He stated that the immigration broker told him that she was filing an employment-based petition for him. She also asked him to come to the United States several times where he had his fingerprints and pictures taken. He stated that the broker had him sign many forms, which he did because he trusted that the broker was filing a petition based on employment. We noted that the first page of the Form I-485 states that the applicant was filing the form based on the status of a family member. The record also contains a letter from dated August 23, 2007, stating that he does not recall the applicant or Ms. and that his records do not show having a client by either name. However, Mr. also stated that due to the passage of time, it is possible that the records were destroyed or misplaced.

We previously found the applicant's explanation not credible when weighed against the documentary evidence against him in the record. Of particular concern was the discrepancy in the applicant's family registers from Korea and the applicant's signature on his Form I-485. The register submitted in 1994 does not include the information for his current spouse, whom he had married in 1982 or the births of his three children. Furthermore, the register submitted in 2006 states that the applicant was married to his current spouse, and reported the marriage as of August 24, 1982 and that the applicant had three children. The submission of these contradictory documents is inconsistent with the applicant's claims as to the immigration broker submitting an employment-based petition on his behalf that he knew nothing about and indicates that he made a willful misrepresentation about his true marital status in an attempt to gain an immigration benefit. Previously on motion, counsel stated that the applicant submitted his family register, in its entirety, to the immigration broker handling his petition, which showed his current marriage and children, but that the broker failed to have the register translated fully. The applicant stated that he did not see the translation before it was submitted.

The Act clearly places the burden of proving eligibility for entry or admission to the United States on the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361 ("Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document . . . ."). Furthermore, it is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

We reiterate that the he applicant is responsible for the translation of documents he submits and the information contained on the forms he signs. Part 4 of the Form I-485 states that an applicant certifies, with his or her signature, under penalty of perjury under the laws of the United States, that the application and evidence submitted with it is all true and correct. The applicant signed his Form I-485, dated September 20, 1994, and is held to account for the misrepresentations within the application under the present circumstances.

We note counsel's assertions regarding the applicant's misrepresentations not being willful and find that the record does not support this assertion. U.S. Citizenship and Immigration Services interprets the term "willfully" as knowingly and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the factual claims are true. In order to find the element of willfulness, it must be determined that the alien was fully aware of the nature of the information sought and knowingly, intentionally, and deliberately misrepresented material facts. *See generally Matter of G-G-*, 7 I&N Dec. 161 (BIA 1956). To be willful, a misrepresentation must be made with knowledge of its falsity. 7 I&N Dec. at 164. To determine whether a misrepresentation was willful, we examine the circumstances as they existed at the time of the misrepresentation, and we "closely scrutinize the factual basis" of a finding of inadmissibility for fraud or misrepresentation because such a finding "perpetually bars an alien from admission." *Matter of Y-G-*, 20 I&N Dec. 794, 796-97 (BIA 1994) (citing *Matter of Shirdel*, 19 I&N Dec. 33, 34-35 (BIA 1984)); *see also Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28-29 (BIA 1979). As the burden is on the applicant to establish that he or she is not inadmissible, the applicant has the burden of showing that any misrepresentation was, in fact, not willful. *See* section 291 of the Act, 8 U.S.C. § 1361. Given the current record, the applicant has not met that burden.

Thus, we affirm the field office director's decision and our previous decisions that the applicant attempted to obtain an immigration benefit through fraudulent documentation and willful misrepresentations when, in 1994, he filed a fraudulent New York marriage certificate, fraudulent family register from Korea, and signed Form I-485 based on this fraudulent marriage. Therefore, the record shows that he is inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is eligible to apply for a waiver of this ground of inadmissibility under section 212(i) of the Act.

Section 212(i) of the Act provides:

> (1) The [Secretary] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The applicant's qualifying relative is his lawful permanent resident spouse. Hardship to the applicant or his U.S. citizen daughter is not considered in section 212(i) waiver proceedings unless it is shown that hardship to the applicant or his daughter is causing hardship to the applicant's spouse. Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez,* the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-,* 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a

result of aggregated individual hardships. *See, e.g.*, *Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido v. I.N.S.*, 138 F.3d 1292 (9th Cir. 1998) (quoting *Contreras-Buenfil v. INS,* 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

The record of hardship includes: a statement from the applicant, a statement from the applicant's spouse, a statement from the applicant's daughter, medical documentation, a psychological evaluation, and letters from the community in support of the applicant and his family.

We previously found that the record indicated that the applicant's spouse would suffer extreme hardship as a result of separation, but did not indicate that the applicant's spouse would suffer extreme hardship upon relocation. Thus, on motion we will only address hardship to the applicant's spouse upon relocation.

In his first motion, counsel stated that the applicant's spouse cannot travel to Korea due to her medical condition because she cannot sit for a 12-hour flight and she cannot lift her luggage. We noted that the medical documentation in the record did not support a finding that the applicant's spouse would be unable to travel to Korea. The applicant and his spouse stated that they no longer own a home in Korea and their business is dissolved, leaving them with no source of income in the country. Counsel stated that the applicant's spouse would not be able to afford medical treatments for her medical conditions. The record failed to include any evidence to support these statements. The record indicated that the applicant and his spouse lived in Korea until 2003, when they moved to the United States. The applicant's Biographic Information Form (Form G-325A), dated December 14, 2006, states that the applicant has been the owner of a restaurant in Korea from 1990 to the present. No documentation was submitted to show that the applicant is no longer a business owner in Korea. We noted that by returning to Korea, the applicant's spouse would be separating from her stepchildren, but the record indicated that the applicant and his spouse chose to separate from their children at a young age, sending the children to school in the United States. Thus, we found that the record did not show that the applicant's spouse would suffer extreme hardship upon relocation to Korea.

On motion, counsel states that if the applicant's spouse relocates to Korea the depression she is experiencing will worsen because she will be separated from her children in the United States and she has become too assimilated into American culture after living here for ten years. We find that the record does not show that the applicant's spouse will suffer extreme hardship upon relocation. We acknowledge that the applicant's spouse has lived in the United States for ten years, but she lived in

Korea for over forty years before coming to the United States and the record continues to show that she owns a business in Korea. The applicant's spouse's hardships upon relocation do not rise to the level of extreme hardship.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *see also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(i) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the motion will be granted and the previous decisions of the AAO affirmed.

ORDER: The motion is granted and the previous decisions of the AAO affirmed.